

Attachment A

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)	
)	
TCR Sports Broadcasting Holding, L.L.P.)	MB Docket No. 08-214
d/b/a Mid-Atlantic Sports Network,)	
Complainant)	
v.)	File No. CSR-8001-P
Comcast Corporation,)	
Defendant)	
)	

WRITTEN TESTIMONY OF JAMES CUDDIHY

I. BACKGROUND

1. My name is James Cuddihy. My business address is 333 W. Camden St., Baltimore, Maryland 21201. I am Executive Vice President of Marketing, Programming, Affiliate Relations of the Mid-Atlantic Sports Network ("MASN").¹ I currently have responsibility for all of the network's day-to-day operations. These include negotiating with various sports teams and universities for the acquisition of new programming, supervising the marketing, advertising, and promotions of the network, negotiating with carriers for affiliation agreements, and overseeing the production of broadcasts.
2. Prior to my employment with MASN, I worked at Comcast SportsNet Mid-Atlantic ("CSN-MA") for four years, as Vice President of Programming, Production and Operations, and at Comcast SportsNet Philadelphia ("CSN-Philly") for four years as Executive Producer. In these capacities, I have extensive knowledge and experience in the field of sports programming and television distribution. I have experience in dealing with multichannel video programming distributors ("MVPDs"), such as Comcast, DirecTV, and Verizon.

¹ MASN is the registered trade name used by TCR Sports Broadcasting Holding, L.L.P. ("TCR"). For convenience, and unless otherwise noted, I use MASN interchangeably to refer to both MASN and TCR.

II. COMCAST'S RETALIATION AND BIAS AGAINST MASN

3. Baltimore Orioles programming rights are of premium value. Comcast fully recognizes this. Its own affiliated Regional Sports Network ("RSN"), CSN-MA, owned the rights to Orioles programming through the end of the 2006 season. As early as 2001, Comcast learned those rights might not be renewed. Comcast aggressively sought to keep the rights to the Orioles. Indeed, CSN-MA even filed a lawsuit against the Orioles in a failed bid to keep these rights. Comcast lost these rights to MASN when its contract with the Orioles expired.
4. Washington Nationals programming rights are of premium value. Comcast fully recognizes this. The Nationals (formerly the Montreal Expos) moved to Washington, D.C. and began playing there at the beginning of the 2005 season. Comcast aggressively sought those rights for its own RSNs. Indeed, the President of Comcast, Steve Burke, wrote a letter to the Commissioner of Major League Baseball ("MLB") pledging to telecast Nationals games "across the Nationals' territory," and David Cohen, a senior Comcast executive, testified before Congress about Comcast's interests in securing these rights. Comcast lost these rights to MASN under a Settlement Agreement between and among MLB, the Orioles, and TCR.
5. Despite aggressively seeking the rights to both the Orioles and the Nationals, which it lost to MASN, Comcast refused to carry MASN for nearly two full MLB seasons. In my opinion, Comcast's refusal to deal with MASN was retaliatory, and Comcast's demonstrated retaliation and bias against MASN provides a necessary context to understanding Comcast's discriminatory conduct.

III. COMCAST'S RSNS ARE SIMILARLY SITUATED TO MASN

6. As Comcast's desire to acquire both Orioles and Nationals programming for its own RSNs clearly shows, MASN is similarly situated to Comcast's affiliated RSNs, most notably CSN-MA and CSN-Philly. In fact, MASN also has competed against CSN-MA for rights to the Baltimore Ravens and the Washington Redskins preseason football games and related programming, as well as other sports programming content.

7. In addition, MASN competes with both CSN-MA and CSN-Philly for advertisers, who wish to target the same general demographic audience that watches the sports programming on these RSNs. Likewise, MASN competes with both CSN-MA and CSN-Philly for viewers, as well as for carriage by MVPDs that seek sports programming content.
8. Based on my personal experience as Executive Vice President of Marketing, Programming, Affiliate Relations of MASN, there is no doubt in my mind that MASN views both CSN-MA and CSN-Philly as competitors.
9. Based on my personal experience as Vice President of Programming, Production and Operations for CSN-MA and as Executive Producer of CSN-Philly, there is no doubt in my mind that both CSN-MA and CSN-Philly view MASN as a competitor.

IV. COMCAST'S DISCRIMINATION AGAINST MASN

10. Since at least the Spring of 2007, Comcast has refused to carry MASN in and around the Harrisburg, Pennsylvania; Roanoke/Lynchburg, Virginia and Tri-Cities, Virginia DMAs.
11. Comcast has telecast Orioles games to its subscribers in the Roanoke/Lynchburg and Tri-Cities DMAs for years when its affiliate, CSN-MA, owned the programming rights to the Orioles. Comcast stopped broadcasting Orioles games to its subscribers in these markets once MASN obtained these rights.
12. Comcast has telecast Orioles games to its subscribers in Harrisburg for years when its affiliate, CSN-MA, owned the programming rights to the Orioles. Comcast also has provided another affiliated RSN, CSN-Philly, to its subscribers in Harrisburg. Since well before early 2005, Comcast was on notice that the Orioles planned to let their contract with CSN-MA lapse after the 2006 MLB season and to bring the production and exhibition rights in-house to TCR. CSN-MA therefore would not be able to keep its programming rights to the Orioles after the 2006 season. In February 2005, Comcast removed CSN-MA from its Harrisburg subscribers, diverting viewers to its other affiliated RSN, CSN-Philly. Even though Orioles games had been available in Harrisburg for many years, Comcast has refused to carry MASN.
13. Comcast's denial of carriage to MASN is in stark contrast to the historical carriage of Orioles games in the Harrisburg, Roanoke/Lynchburg and Tri-cities markets for decades,

both through over-the-air broadcasts and MVPD telecasts. Indeed, Comcast paid to carry CSN-MA and telecast Orioles games in these areas even though CSN-MA offered far fewer Orioles games (approximately 80-90) than MASN provides (160).

14. Comcast's denial of carriage to MASN also is in stark contract to the current carriage of MASN by other MVPDs in these three markets. Comcast's competitors carry MASN in these markets. In fact, most non-Comcast MVPD subscribers in Harrisburg, Roanoke/Lynchburg and Tri-Cities receive MASN. These fair market decisions show that MASN offers a good value to subscribers in Harrisburg, Roanoke/Lynchburg and Tri-Cities. Unlike Comcast, the MVPDs that carry MASN in these areas do not have an affiliated RSN to protect.

V. DEMAND FOR MASN IS STRONG

15. Demand for MASN's programming in and around Harrisburg and throughout Virginia is strong and increasing. The carriage decisions of other MVPDs in Harrisburg and southwest Virginia at the same rates offered to Comcast provide objective proof of the popularity of MASN's programming at a competitive price. In fact, on May 7, 2009, MASN signed an affiliate agreement with another MVPD, Giles Craig, in the Roanoke/Lynchburg DMA.
16. Nielsen ratings provide additional objective evidence of the demand for MASN programming. For example, in July 2004 (the most recent period for which Orioles games were televised widely throughout the region and the final year that the Orioles had exclusive rights to the team's territory before the Nationals arrived in Washington), the Orioles achieved an average [REDACTED] rating per game on CSN-MA in the Harrisburg DMA. Based on my experience within the industry, this is a significant rating that illustrates strong demand for the Orioles. Had CSN-MA been more widely distributed, the already strong [REDACTED] rating for Orioles games could only have increased significantly. During that same period of July 2004 in Roanoke, the rating for Orioles games was [REDACTED]. That again proves significant interest in Orioles games and refutes any claim to the contrary.
17. Demand for MASN's programming continues to be strong. In May 2007, Orioles games garnered a [REDACTED] rating in the Harrisburg DMA – a remarkably strong level of viewership given that it is not carried on Comcast's market-dominating cable systems. From 2004 to

2006, Orioles games received ratings of [REDACTED] on CSN-MA in the Harrisburg DMA, and from [REDACTED] in the Roanoke/Lynchburg DMA. (I do not have ratings information for the Tri-Cities DMA, or for the Roanoke/Lynchburg DMA in 2007.) These ratings undermine any claim by Comcast that carriage of MASN is justified only in the “core” areas of Washington, D.C. and Baltimore.

18. Additional evidence of demand for MASN comes from the number of affiliate radio stations that carry Orioles games in Virginia and Pennsylvania. For example, in Pennsylvania, Orioles games are carried by WIOO-AM (1000 AM) in Carlisle; WHVR-AM (1280 AM) in Hanover; WPDC-AM (1600 AM) in Lancaster; WEEO-AM (1480 AM) in Shippensburg; and WOYK-AM (1350 AM) in York. The Orioles also have affiliate agreements with multiple radio stations across Virginia: WXTR-AM (730 AM) in Alexandria; WKEX-AM (1430 AM) in Blacksburg; WKTR-AM (840 AM) in Charlottesville/Earlysville; WKCY-AM (1300 AM) in Harrisonburg; WAGE-AM (1200 AM) in Leesburg; WBRG-AM (1050 AM) and WBRG-FM (104.5 FM) in Lynchburg; WODY-AM (1160 AM) in Martinsville; WGH-AM (1310 AM) in Norfolk; WLEE-AM (990 AM) in Richmond; WWXX-FM (94.3 FM) in Warrenton; WKCI-AM (970 AM) in Waynesboro; and WTFX-AM (610 AM) in Winchester. Furthermore, Nationals games are carried on WKTR-AM (840 AM) in Charlottesville, Virginia; WXTG-FM (102.1 FM) in Norfolk; WXTG-AM (1490 AM) in Virginia Beach; WAGE-AM (1200 AM) in Loudon County; and WXGI-AM (950 AM) in Richmond, Virginia. In my judgment, those affiliate agreements are further evidence of demand for MASN in Pennsylvania and Virginia.
19. While Comcast has refused to carry MASN in Harrisburg, Comcast carries MASN throughout much of the rest of the Harrisburg DMA. Indeed, Comcast carries MASN on its Lancaster, York, Hanover, York County, Adams County, Lancaster, Carlisle, Chambersburg/Shippensburg, Waynesboro/Mt. Alto, Greencastle, and Fort Loudon systems in the Harrisburg DMA. In my experience, there is not so significant a difference in fan interest for the Orioles among the different communities within the Harrisburg DMA as to justify no carriage at all in neighboring Harrisburg.
20. Demand for MASN’s programming also is consistent with history. Since 1981, the Harrisburg area has been an important source of fan support for the Orioles. Harrisburg is

just eighty miles from Baltimore, placing attendance of games easily within reach of Orioles fans who live there. And because Harrisburg is one of the largest population centers in immediate proximity to Baltimore, the Orioles franchise has long seen Harrisburg as an important source of fan support. The same is true of the Baltimore Ravens, for which MASN is the official cable sports network, telecasting live pre-season games and programming seven nights a week. Furthermore, Virginia, and in particular southwestern Virginia, is an area where the Nationals and Orioles have obtained, and will continue to seek, the loyalties of baseball fans.

21. Interest in the Orioles, Nationals, and MASN in the disputed regions is likely to increase even more in the future. First, the Nationals are still a new team whose fan base will only increase over time. Second, the Orioles recently acquired the Norfolk Tides minor league team, which was previously part of the New York Mets organization. The Orioles' acquisition of the Norfolk Tides further increases the Orioles' presence in southern Virginia. Finally, the Nationals recently acquired the Harrisburg Senators, a minor league affiliate (AA) based in Harrisburg.
22. Another example of MASN programming that is of particular interest to viewers in the disputed areas is the Baltimore Ravens. MASN is the official cable sports network of the Baltimore Ravens, with the rights to all of the non-national network Ravens pre-season games and a range of related programming throughout the season that is unavailable on other channels. Harrisburg has been designated by the National Football League ("NFL") as within the Baltimore Ravens home market television territory for purposes of delineating television restrictions, offering still more evidence that Harrisburg is seen as a natural fan base for Baltimore sports teams.
23. MASN has also worked hard to focus on sports programming of particular interest to viewers in Harrisburg and Virginia and throughout its seven-state territory. MASN currently boasts the largest college basketball programming lineup in the mid-Atlantic region, consisting of more than 170 NCAA Division I Men's Basketball games, many of which are of direct local interest to viewers in Harrisburg and Virginia. In addition, MASN televises more than sixty NCAA Division I College Football games of local and national interest each season, a lineup that requires double and tripleheaders on many Saturdays.

REDACTED, PUBLIC VERSION

MASN also has featured the best in Division I NCAA Lacrosse games featuring Johns Hopkins University, Georgetown University, and the United States Naval Academy. Indeed, MASN is the Official Mid-Atlantic Cable Network of the Big South – telecasting college football and basketball games of schools located in the Roanoke/Lynchburg area, such as the Virginia Military Institute, Radford University, and Liberty University. In the last two seasons, for example, MASN has produced and/or telecast eight Liberty University football games, two Virginia Military Institute football games, ten Liberty University basketball games, four Radford University basketball games, and four Virginia Military Institute basketball games. Each of those schools is located in the southwestern Virginia DMAs. Comcast subscribers in the Roanoke/Lynchburg region were precluded from seeing any of these games by Comcast's refusal to carry MASN. MASN is also the official RSN of Georgetown University basketball.

24. All told, MASN will produce and exhibit more than 600 live professional and collegiate sporting events each year, one of the highest numbers of any RSN in the country. MASN is continually adding to that lineup in an effort to market a product that is attractive across its seven-state territory. Demand for MASN's programming in the contested DMAs is further evidenced by countless conversations I have had with station managers, athletic directors, and school presidents. One radio station in southwestern Virginia (WRNL), for example, has asked MASN to provide a beat reporter who can be interviewed each week about the Orioles and the Nationals, and MASN has done so.
25. I also want to emphasize that Comcast's carriage decisions themselves affect demand for MASN in the Harrisburg and southwestern Virginia DMAs. It is my experience that demand for all programming — especially sports programming — is not fixed. Instead, sports fans' interests in teams — including baseball teams — depends upon an ability to follow a team closely, including being able to watch the team on television. Carriage decisions thus strengthen viewers' interest in sports programming in areas where that programming is shown and undermine viewers' interest in sports programming in areas where that programming is not being shown. In that way, Comcast is a market maker, whose carriage decisions can themselves affect fans' interests in sports teams.

VI. COMCAST'S FAVORITISM AND DOUBLE STANDARDS

26. During my time as Vice President of Programming, Production and Operations for CSN-MA, it was commonly accepted that the Orioles programming rights were the network's most valuable property. In fact, Comcast carried CSN-MA in certain markets where its other marquee professional programming (namely, Washington Wizards basketball and Washington Capitals hockey) was blacked-out due to National Basketball Association ("NBA") and National Hockey League ("NHL") rules. In other words, Comcast provided CSN-MA in markets when the only professional programming subscribers received was the Orioles games. Orioles games consistently obtained the highest ratings in the Baltimore market and among the highest ratings in the Washington market. I understood that CSN-MA was carried on a basic or expanded basic tier across Comcast's systems, and I do not recall any discussion that the value of Orioles programming was any different outside Baltimore and Washington, D.C. Moreover, this was true even though CSN-MA at the time only had the rights to telecast roughly half the number of Orioles games that MASN telecasts today.
27. Even after CSN-MA lost the rights to Orioles programming, Comcast continued to carry CSN-MA in Roanoke/Lynchburg and Tri-Cities. Comcast did so even though CSN-MA attempted to *increase* the rates it charged to MVPDs.
28. CSN-MA has limited and non-exclusive rights to broadcast collegiate sports programming from the Atlantic Coast Conference ("ACC"). Based on my experience in the industry, collegiate sports programming is simply not as valuable as professional sports programming. That is precisely why license fees for professional sports programming tend to be significantly higher than license fees for collegiate sports programming. For example, the cost of Orioles' and Nationals' programming rights is many orders of magnitude higher than the cost of any collegiate sports' programming rights. In my experience, cable operators care first and foremost about the number of live professional events.
29. I personally negotiated a deal with the ACC on behalf of CSN-MA. [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

30. I have personally experienced Comcast's very different treatment of its own affiliated CSN-MA and MASN. One example relates to "split feeds." A "split feed" is when the programmer sends a signal to one part of its market and a different signal to a different part of its market. Programmers value the ability to offer more than one programming feed within a television territory because they can offer advertising or other specialized programming that is tailored to subparts of that territory. The ability to offer targeted advertising through such "split feeds" is highly valued by advertisers and, by extension, highly profitable for a programmer like MASN.
31. In 2002, when I was serving as Vice President of Programming, Production and Operations for CSN-MA, the network sought to split feeds so that it could provide targeted advertising. Comcast was immediately receptive, and Comcast's Michael Ortman worked with me and the CSN-MA affiliate sales team to make it possible. I am not aware of any discussion of whether split feeds were or were not contemplated by any contractual agreement between Comcast and CSN-MA.
32. When MASN approached Comcast in 2007 and sought to split feeds, Comcast took the opposite position. This time Mr. Ortman took the position that MASN's affiliate agreement did not permit it. Only after filing a lawsuit was MASN able to obtain what Comcast has willingly provided to CSN-MA since 2002. Based on reports I receive from advertising sales officials, CSN-MA still provides split feeds for advertising.
33. I similarly witnessed Comcast engage in discriminatory treatment with respect to its provision of so-called overflow channels to its own RSNs and MASN. RSNs often need overflow channels when two live sporting events conflict. For example, on evenings when both the Orioles and the Nationals play games against other opponents, MASN telecasts the games on two different channels: the regular MASN channel and MASN2, an overflow channel.

34. During my time as Vice President of Programming, Production and Operations for CSN-MA, Comcast took pains to ensure that CSN-MA had sufficient overflow capacity when there were conflicting games of the Orioles, the Wizards, and the Capitals by pre-empting the regular programming of other channels, including News Channel 8 in Washington, D.C., and Comcast Network 8 (CN 8) in Baltimore, and making that channel available to CSN-MA. To my recollection, Comcast readily made accommodations to ensure that all of CSN-MA's live sports programming could be telecast even if that meant interrupting programming on other channels to do so.
35. By contrast, Comcast has continually expressed concern about MASN's overflow requirements. In fact, Comcast currently is using those requirements as one of its supposed reasons for refusing to carry MASN in the Harrisburg, Roanoke-Lynchburg, and Tri-Cities DMAs. Here again, there is a substantial difference between the way Comcast treats its own RSNs and the way it treats MASN.
36. Other actions taken by Comcast further evidence its retaliation against MASN. In April 2005, Comcast sent letters to other MVPDs warning them not to carry MASN because Comcast was contesting its right to telecast Orioles games. And even when Comcast agreed to carry MASN, after more than a year of delay and regulatory action, Comcast immediately raised its rates, and then sent letters to its subscribers blaming that rate increase to MASN. No other MVPD in MASN's seven-state territory raised its rates, much less blamed MASN publicly for its increased programming costs, even though they paid identical rates to MASN.

VII. COMCAST'S FORECLOSURE HARM'S MASN'S ABILITY TO COMPETE FAIRLY

37. Obtaining carriage on Comcast's cable systems in Harrisburg, Roanoke/Lynchburg and Tri-Cities is critically important to MASN's ability to compete fairly in the RSN marketplace. In particular, Comcast's refusal to carry MASN adversely affects MASN's ability to compete fairly in the RSN marketplace for access to sports programming rights. Part of this is simple math: Comcast's [REDACTED] subscribers in and around Harrisburg and Virginia account for roughly [REDACTED] of the total Comcast subscribers within MASN's seven-state territory.

38. Comcast's denial of such a large stream of subscriber revenue harms MASN unfairly because, unlike national programming networks, RSNs must pay substantial license fees to get access to valuable sports programming. As a result, RSNs need access to the maximum number of subscribers within their league-defined geographic footprints in order to compete fully and fairly. With the price of acquiring sports programming content on the rise throughout the industry, MASN can compete with other RSNs, including Comcast's own CSN-MA and CSN-Philly, only if it can afford to pay the high price of acquiring the programming that consumers are demanding. For example, MASN and CSN-MA competed for the programming rights to the Washington Redskins. CSN-MA secured those rights for an amount I believe to be far less than the amount of subscriber fees at issue in this proceeding.
39. Coverage gaps also harm MASN's ability to compete fairly by reducing the attractiveness of MASN carriage in the eyes of holders of valuable programming rights. MASN's limited penetration was cited as a problem during negotiations I undertook with the Washington Redskins in 2008 and 2009 for programming rights. Comcast ultimately won those rights and is currently telecasting Redskins preseason games and other Redskins-related programming on CSN-MA. In the past, MASN has also competed directly with Comcast for rights to other regional sports programming, including rights to the games of the D.C. United professional soccer team, the college football and basketball games of the ACC and Colonial Athletic Association ("CAA"), and the pre-season games of the Baltimore Ravens. As with the Redskins rights, Comcast ultimately won the programming rights of D.C. United, the ACC, and the CAA. These are significant rights that MASN missed out on at least in part because of MASN's coverage gaps.
40. Based on my extensive experience negotiating for sports rights, MASN will be hindered in its ability to negotiate for access to other sports programming rights in the future (including professional and collegiate programming) without full carriage on Comcast's systems. For example, Comcast's refusal to carry the approximately [REDACTED] subscribers in the MASN territory will have a direct competitive impact on MASN's ability to compete with CSN-MA for the rights to Washington Wizards games, Washington Capitals games, pre-season Washington Redskins games, and D.C. United Games when CSN-MA's contracts with those professional sports franchises expire. Without access to those [REDACTED] subscribers,

MASN will face an unequal playing field in competing head-to-head with CSN-MA for the rights to those games, as well as ACC and CAA collegiate football and basketball games. This is an extremely important issue for MASN, as access to these subscribers — and the revenue streams they generate — is crucial to MASN's ability to compete with other RSNs for access to must-have regional sports programming.

41. Comcast's refusal to carry MASN in Harrisburg and various locations in Virginia also unfairly harms MASN's ability to compete for advertising dollars. MASN currently offers three packages for advertisers: one that covers the southern portions of MASN's territory, including Washington, D.C., one that covers the northern portions of MASN's territory, including Baltimore, and one that combines these two packages and covers MASN's entire footprint. The prices that MASN charges for those packages are based in part on the number of viewers that will get access to MASN's programming. Because Comcast is the dominant MVPD in each relevant region, were Comcast to carry MASN in those areas, MASN would receive increased advertising revenue because MASN would be able to charge more for the package that includes MASN's entire footprint. Advertising revenue is an important part of an RSN's ability to compete.

42. Coverage gaps also have unfairly harmed MASN's efforts to sell advertising on its network. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The same is true with respect to accounts for which Roanoke and Harrisburg are important.

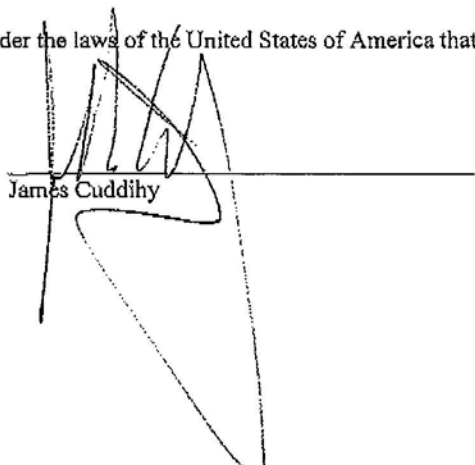
43. If coverage gaps unfairly harm MASN's ability to earn advertising dollars, Comcast's refusal to carry MASN in Harrisburg and southwestern Virginia simultaneously boosts the advertising and other revenue that Comcast's own affiliated RSNs can command in both areas. For example, denying MASN carriage increases the size of the television audience for CSN-Philly's programming, which includes the Phillies, thereby increasing the value of

the Phillies' television rights and thus the advertising rates that CSN-Philly can charge during Phillies games. MASN thus becomes relatively less attractive (and Comcast's own RSNs, including CSN-MA and CSN-Philly, relatively more attractive) from the perspective of independent programmers who want the greatest possible exposure for their programming. That dynamic increases still further the leverage Comcast wields in negotiating for programming rights throughout MASN's territory.

44. By denying carriage to MASN in and around Harrisburg, Comcast also undermines efforts by the Orioles and Nationals to develop and grow their fan base in southeastern Pennsylvania. By contrast, if MASN were to continue to expand its presence in and around Harrisburg, it would be in a stronger position to bid competitively for the rights to sports programming.
45. Comcast's refusal to carry MASN in the Tri-Cities area and on other Virginia cable systems has a similar effect. Comcast's discrimination undermines MASN's ability to compete for other sports programming rights in Virginia, thus favoring the interests of Comcast's own affiliated RSN, CSN-MA, which can purchase those rights more cheaply absent competition from MASN. Comcast's refusal also undermines MASN's ability to compete for advertising dollars, fan loyalties, and subscribers in Virginia.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

James Cuddihy

A handwritten signature in black ink, appearing to be 'James Cuddihy', is written over a horizontal line. The signature is stylized with a large, sweeping loop that extends downwards and to the right.

May 8, 2009